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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 17

WALTER HUMPHREY, Etc., Et Al., - Petitioners,

versus

C. W. MOORE, Etc., Et Al.,
GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 89,
and
DEALERS TRANSPORT COMPANY, - Respondents.

ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

BRIEF FOR RESPONDENT, DEALERS TRANSPORT COMPANY.

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WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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v.

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DEALERS TRANSPORT COMPANY, - - *Respondents.*

ON A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

BRIEF FOR RESPONDENT, DEALERS TRANSPORT COMPANY.

QUESTION PRESENTED.

Whether employee-members of a labor union may seek relief against their union and their employer in a state court action in which they challenge an award to consolidate seniority lists of two employers on the grounds that the award is in violation of natural justice and of their rights under the contract.

STATEMENT OF CASE.

This Respondent, Dealers Transport Company, adopts as its own, the statement of the facts of the case as reflected by Petitioner's brief (R. 3-11) and in the findings of facts of the Court of Appeals of Kentucky (R. 25-34) as reported at 356 S. W. 2d 241, with the following additions and observations:

Although the record reflects that certain employees of E & L filed a grievance for the purpose of determining their seniority status after it was announced E & L was quitting business in Louisville, Kentucky, no employees of Dealers Transport Company filed a grievance. The record reflects that Dealers' employees after being informed that E & L's employees were attempting through union procedure to replace them at Dealers relied entirely on the representations of the union president, Preddy, who had told them that they had no reason to fear and that the grievance of the E & L's employees would not be considered.

SUMMARY OF ARGUMENT.

We agree with Mr. Justice Black in his dissenting opinion in *Smith* v. *Evening News*, 371 U. S. 195, where he said:

> "Finally, since the Court is deciding that this type of action can be brought to vindicate workers' rights, I think it should also decide clearly and unequivocally whether an employee injured by the discrimination of either his employer or union can file and prosecute his own lawsuit in his own way. I cannot believe that Congress intended by the

National Labor Relations Act either as originally passed or as amended by Section 301 to take away rights to sue which individuals have freely exercised in this country at least since the concept of due process of law became recognized as a guiding principle in our jurisprudence. And surely the Labor Act was not intended to relegate workers with lawsuits to the status of wards either of companies or unions."

The Court below put it this way (R. 32-33):

"Under these particular circumstances the solution of the controversy under the cloak of a spurious 'grievance' against a virtually disinterested employer simply will not bear careful scrutiny, and when we view the erroneous decision of the Detroit committee against such a background we judge it as having been arbitrary and violative of natural justice. Any other conclusion would reduce these employees to the status of pawns instead of free men. So, even though it be considered that the Detroit ruling was made pursuant to Article 7, Section 2 (d) of the contract, providing for arbitration of all questions of contract interpretation, it still cannot stand."

ARGUMENT.

Since the institution of this lawsuit, Dealers has maintained a neutral position. Dealers complied to the best of its ability to the award of the Joint Conference Committee as of October, 1961. This position of neutrality was presented in the Trial Court, in the Appellate Court and will be maintained in this Court. The Kentucky Court of Appeals found (R. 31-32):

> "Before proceeding further let us clarify the position of Dealers, the employer, in this matter. It is neutral. Its (fol. 92) relations with its employees have been highly satisfactory, and the year ending July 1, 1961, was its best year to date for efficiency as to accidents, cargo-damage, and the like. It has recognized all along that the real controversy here was within the union itself. It feels bound to honor the contract and the 'decisions of all agents to the employees who legally work for us.' At Detroit it took the position that it was up to the union to decide what to do with the employees. In its November 25 letters to the 96 displaced employees it specifically advised them that their dismissal was 'necessary due to Union action whereby the decision was rendered' by the Detroit committee requiring absorption of the E & L seniority list. It seems clear that Dealers was scarcely a real party in interest to the grievance proceeding. The actual antagonists were the E & L men on the one hand the Dealers men on the other, all union members."

Dealers feels that this position of neutrality does not absolve itself of its obligations to present some factual argument in order to clarify its position. It feels that in the interest of its present and future employees that the issues raised in the dissenting opinion of *Smith* v. *Evening News* (cited above) should be answered by this Court. Since the inception of this case Dealers has been disturbed as to its rights and the rights of its employees under the grievance procedure, Article 7, Section 2 (R. 11-12), of its contract with the Union. Nothing in the record indicates that Dealers

was aware of the fact that the Union intended to take a position that Dealers' employees and E & L employees were to be sandwiched. Had Dealers been given such notice prior to the Joint Conference meeting in Detroit, its position could possibly have been changed to the extent that it would have failed to agree to the sandwiching proposal and insisted on going to the final step under Section 7 of the grievance procedure and insisted on an arbitration of the dispute.

The Joint Committee based its decision to sandwich the two employee groups on Article 4, Subsections 4 and 5 of the Agreement (R. 59-60). This decision is based upon the statement of the Joint Committee as "request of employees R. L. Lewis and Howard Baker on behalf of themselves and other former employees of E & L Transport Co. of Ky. as to their seniority rights with Dealers Transport Co. because of the *discontinuance* of operations in Louisville by E & L Transport Co. of Ky." (Emphasis supplied.) Dealers therefore respectfully raises the question as to the validity of the interpretation by the Joint Board of Article 4, Sections 4 and 5, of the Agreement. Section 5 of Article 4 provides (R. 10):

> "In the event that the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by mutual agreement between the Employer and the Unions involved. Any controversy with respect to such matter shall be submitted to the joint grievance procedure (Article 7)."

The lower court held there was no merger or absorption of the business of E & L by Dealers (R. 26). If this holding is correct the Joint Board had no authority under Article 4, Subsection 5, to decree a merger of the two seniority lists.

We are not impressed with the theory advanced by Petitioner that the Joint Board had authority to revise the contract in compliance with its decision. This Joint Board did not negotiate the contract. It was negotiated by the National Truckaway and Driveaway Conference consisting of representatives of management members of the Conference and with the International Union. We question therefore the authority of the Joint Grievance Committee to "legislate" as insisted by the Petitioner.

It would seem to follow that if the decision of the Joint Grievance Committee bypasses the final step of arbitration under Article 7, Subsection 2, of the Agreement that Dealers' employees, having been misled by the local Union President, have been denied the right to be heard. This Court has held in *General Drivers, Warehousemen & Helpers Local 89* v. *Riss & Company, Inc.* (372 U. S. 517, 519-520) that no action will lie under Section 301 of the Taft-Hartley Act to enforce an award where it is not shown that the award is not final and binding under the contract. It would seem from this doctrine that the only conclusion to be reached would be that the decision of the Joint Committee, although unanimous, was not a final decision and that the Dealers' employees have been denied their

right to the final arbitration step. The Court in *Riss* said:

> "Of course, if it should be decided after trial that the grievance award involved here is not final and binding under the collective bargaining agreement, no action under Section 301 to enforce it will lie. Then, should petitioner seek to pursue the action as a Section 301 suit for breach of contract there may have to be considered questions unresolved by our prior decisions."

It should be noted that the petitioner in the *Riss* case is the petitioner in the case at bar.

It would appear that since the President of the local Union had been fully advised that the employees of Dealers were challenging the grievance of E & L employees under the terms of the agreement it would have been his obligation to have deadlocked the Joint Committee and thereby given Dealers' employees an opportunity to obtain an interpretation through an impartial arbitrator as to the seniority provisions of the contract. This raises the suggestion that the failure of the Union President to protect the legal rights of his Dealer employee members constituted an ultra-vires act on his part. Under these circumstances, we suggest that since the Dealers' employees have been denied the right to impartial arbitration they clearly have a standing in Court to enforce these rights. Dealers suggest that any decision to the contrary would not be in conformity with the holdings of this Court in *United Steel Workers* v. *American Manufacturing Co.* 363 U. S. 564, and *United Steel Workers* v. *Warrior &*

Gulf Nav. Co., 363 U. S. 574. In Dealers' efforts to maintain a position of neutrality we do not deem it proper that we should attempt to analyze the arguments as set out in petitioners' brief other than to suggest that it sets out admirably petitioners' position.

CONCLUSION.

We submit that the only question here is whether or not Dealers' employees have the right under Section 301 of the Taft-Hartley Act to test an award of the Joint Grievance Committee in the absence of any final decision through the arbitration procedure under the Agreement.

Respectfully submitted,

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